

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION**

DANIEL LYNN BROWN, JR.,)	
)	
Plaintiff,)	
vs.)	Case No. 1:15-cv-0224-TWP-DML
)	
DR. MICKEY CHO, et al.,)	
)	
Defendants.)	

**Entry Dismissing Claims Against Dr. Cho, Dr. Ulrich, and the UAP Health Clinic
for Lack of Jurisdiction**

This action was filed on February 13, 2015. An amended complaint filed on March 17, 2015, asserted a Federal Tort Claim against the United States and state law medical malpractice claims against Dr. Cho, Dr. Ulrich, and the UAP Health Clinic. Dkt. 4. The Court allowed the medical malpractice claim to proceed based on its supplemental jurisdiction under 28 U.S.C. § 1367.

Defendants Dr. Cho, UAP Clinic, and Dr. Ulrich have moved to dismiss the medical malpractice claim for lack of subject matter jurisdiction. The moving defendants report that on April 20, 2016, the plaintiff filed a proposed complaint for medical malpractice with the Indiana Department of Insurance (“IDOI”). They request that this Court transfer the action to the IDOI.

This Court lacked subject matter jurisdiction over the medical malpractice claims when this action was filed because the plaintiff had not complied with the statutory requirements under Ind. Code. § 34-18-8-4. “A medical review panel must issue an opinion on every medical malpractice claim before that claim may be pursued in Indiana courts.” *Medical Assur. Co., Inc. v. Hellman*, 610 F.3d 371, 374 (7th Cir. 2010) (citing Ind. Code § 34-18-8-4). Because at the

time this action was filed the plaintiff had not complied with the Indiana statute, this Court lacks subject matter jurisdiction over his medical malpractice claims. The motion to dismiss [dkt. 107] is **granted** and the claims against Dr. Cho, UAP Clinic, and Dr. Ulrich are **dismissed without prejudice for lack of jurisdiction**. The Court finds no basis on which to transfer some of the claims in this action to the IDOI. No partial final judgment shall issue at this time.

The plaintiff's motion for mediation [dkt. 111] is **denied as moot**.

The clerk shall **update the docket** to reflect the dismissal of defendants Dr. Cho, UAP Clinic, and Dr. Ulrich.

The Federal Tort Claim shall continue to proceed against the United States.

IT IS SO ORDERED.

Date: 8/16/2016

A handwritten signature in black ink, reading "Tanya Walton Pratt", is positioned above a horizontal line.

TANYA WALTON PRATT, JUDGE
United States District Court
Southern District of Indiana

Distribution:

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